

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 3

THE PEOPLE,

Plaintiff and Respondent,

v.

DANNY THOMAS SASTINI,

Defendant and Appellant.

A152809

(City & County of San Francisco  
Super. Ct. No. 17013445)

Danny Thomas Sastini appeals from a parole revocation finding. The trial court concluded from two court records that Sastini was aware of his obligation to report to his parole agent upon his release yet failed to do so. Sastini contends the trial court relied on inadmissible hearsay when it found he was notified of his duty to report. He also contends admission of the hearsay violated his due process right to confront and cross-examine the witnesses against him. We conclude the documents were admissible under the exception to hearsay for official records. We affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

Sastini entered a no contest plea to a single charge that he failed to register as a sex offender. (Pen. Code, §§ 290.012, subd. (a), 290.018, subd. (b).) He was released to parole the same day with credit for time served. When he failed to report to his parole agent, the California Department of Corrections and Rehabilitation filed a petition to revoke his parole. He was charged with absconding, failure to report, refusal to participate in GPS monitoring and several illegal acts.

During the revocation hearing, Sastini's parole agent authenticated two documents

in Sastini's parole file: a minute order and a certified abstract of judgment. Each of them show Sastini was notified of his obligation to report to his parole agent, a required condition of his parole. However, the agent had no personal knowledge of the events depicted in the documents, and only received them as part of his assignment to Sastini. Sastini objected to the admission of both documents as hearsay.

The trial court admitted both documents and found Sastini in violation of parole for his failure to report, absconding, and his failure to participate in GPS monitoring. He was sentenced to 180 days in county jail. Sastini timely appealed.

**I. Documentary Evidence Was Properly Considered by the Trial Court.**

A trial court's decision to admit or exclude evidence in a parole revocation hearing will not be disturbed on appeal absent an abuse of discretion. (*People v. O'Connell* (2003) 107 Cal.App.4th 1062, 1066; see generally *Gagnon v. Scarpelli* (1973) 411 U.S. 778, 782.) "As long as hearsay testimony bears a substantial degree of trust-worthiness it may legitimately be used at a [parole] revocation proceeding." (*People v. Brown* (1989) 215 Cal.App.3d 452, 454.)

Sastini claims the trial court erred in admitting the minute order to prove he had notice of his obligation to report for parole because the minute order was inadmissible hearsay. He goes on to say that, because the minute order was the only evidence of his knowledge of the obligation, the People did not meet their burden of proof to show he committed a violation. But the minute order was admissible as an official record.

Records prepared by a public employee are generally admissible as an exception to hearsay in parole revocation hearings if (1) the record was made by a public employee within the scope of official duties, (2) it was made at or near the time of the act, condition, or event depicted, and (3) the source of information and method and time of preparation indicate its trustworthiness. (Evid. Code, § 1280.)

A minute order is the courtroom clerk's record of any order, judgment or decree of the court. (Gov. Code, § 69844.) "[U]nder Evidence Code section 664, '[i]t is presumed that official duty has been regularly performed.' This presumption 'affect[s] the burden of proof' (Evid. Code § 660), meaning that the party against whom it operates—here the

defendant—has ‘the burden of proof as to the nonexistence of the presumed fact.’ [Citations.] California courts have applied this presumption in finding that proffered evidence satisfies the foundational requirements of the official records exception.” (*People v. Martinez* (2000) 22 Cal.4th 106, 125.)

The parole agent testified that the minute order was received directly from the court. It was in the parole file he maintains on Sastini, and parole files, such as Sastini’s, are regularly relied on by parole agents. The minute order qualified as an official record, and was reasonably relied upon by the superior court to show Sastini was informed he had to report to his parole agent.

Even if we were to assume, for the sake of argument, that the minute order was not properly admitted, the result would not change. The minute order was not the only evidence that Sastini was notified of his obligation to report to his parole agent. The certified abstract of judgment from his original conviction reflects that Sastini was ordered to report to his parole agent upon release, and it, too, is admissible as an official record. (Evid. Code, § 1280.) The parole agent testified that he relied on the entire “parole file,” which included the abstract of judgment. Sastini makes no argument that the court erred in considering the abstract. Because the trial court would thus have reached the same result without the minute order, any error was harmless.

## **II. There Was No Violation of Sastini’s Right to Confront the Witnesses Against Him.**

Sastini also claims admission of the minute order violated his Fourteenth Amendment due process right to confrontation because it was akin to admitting a transcript of prior testimony from his plea hearing. But this issue is not preserved for review. Sastini objected to admission of the minute order on the ground it was inadmissible hearsay. He made no assertion to the trial court that its admission would impair his right to confrontation.

Sastini’s constitutional claim is forfeited. On appeal, a party is not permitted to challenge an evidentiary ruling based upon an argument never presented to the trial court. (*People v. Partida* (2005) 37 Cal.4th 428, 435-438.) While a defendant may make a

“very narrow” due process argument premised upon the fundamental fairness of erroneously admitted evidence, such an argument bears only upon the consequences of the trial court ruling, not its reasons. (*Id.* at p. 438.) An appellant may not assert a different theory for the exclusion of evidence than asserted at trial. (*Ibid.*)

Even if this issue were not forfeited by Sastini’s failure to assert an objection based on his right to confrontation, it is without merit. Some limited varieties of hearsay evidence are admissible without violating a defendant’s right to confrontation. Despite its hearsay character, documentary proof of a prior conviction does not violate a right to confrontation. (*People v. Lizarraga* (1974) 43 Cal.App.3d 815, 820.)

“[T]he need for confrontation is particularly important where the evidence is testimonial, because of the opportunity for observation of the witness’s demeanor. [Citation.] Generally, the witness’s demeanor is not a significant factor in evaluating foundational testimony relating to the admission of evidence such as laboratory reports, invoices, or receipts, where often the purpose of this testimony simply is to authenticate the documentary material, and where the author, signator, or custodian of the document ordinarily would be unable to recall from actual memory information relating to the specific contents of the writing and would rely instead upon the record of his or her own action.” (*People v. Arreola* (1994) 7 Cal.4th 1144, 1157.)

Cross-examining the court clerk or observing his or her demeanor would not be significant in evaluating the sufficiency of the foundational testimony for the court’s minute order, nor would such testimony be similar to that of a percipient witness that could be tested by cross-examination. Admission of the minute order did not violate Sastini’s right to confrontation.

#### **Disposition.**

The order is affirmed.

---

Siggins, P.J.

WE CONCUR:

---

Fujisaki, J.

---

Petrou, J.

*People v. Sastini*, A152809